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EXAMINER

FISCHMANN, BRYAN R

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 12/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/942,673

Applicant(s)

BOUFFARD ET AL.

Examiner

Bryan Fischmann

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 9-14, 16-18 and 20-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7, 9-12, 14, 16 and 17 is/are allowed.
- 6) ☒ Claim(s) 1-6, 18 and 20-34 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Acknowledgments

1. The Formal Drawings (paper 6) and the Amendment (paper 8) and filed 10-06-2003 have been entered.

Request for Information

2. Figure 2A is described as "Related Art". Paragraph 0007 recites "Figure 2A is a perspective view showing another related art ATV 100 described in the application referenced above.

It is requested that the Applicant clarify what "application" the "related art" Figure 2A originated from, and if the Related Art of Figure 2A is available as prior art, as Figure 2A would appear to be "readable" on at least some of the claims.

Claim Objections

3. Claim 13 is objected to due to the following:

Claim 13 recites "...the at least one opening is not located directly vertically of the engine".

This recitation, particularly the words "of the engine" is considered a bit awkward. Perhaps the words "of the engine" might be replaced with the words "over the engine", or similar.

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Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 32-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent 1-301484.

Japanese Patent 1-301484 teaches a straddle-type vehicle comprising:

an engine (1);

a seat (structure surrounding reference number 12 on Figure 3) having a front portion positioned generally above the engine;

an air intake system (Figure 1) operatively connected to the engine; and

at least one opening ("open" area at bottom and rear portion of seat) adjacent a rear portion of the seat and supplying intake air to the air intake system, the at least one opening being at least partially formed by the rear portion of the seat.

Regarding claims 33 and 34, see Figure 3.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to

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a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1 and 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent 61-200029.

Japanese Patent 61-200029 teaches a vehicle having a frame (Figures 2-4) and front wheels and rear wheels suspended from the frame (Figures 1-4) comprising:

a seat (32);

a fender structure attached to the frame and including a pair of rear fenders (10 - see comments below) with each fender positioned on a side of the seat (left and right side - see comments below), the rear fenders having at least one ventilation opening (88);

an engine (58) mounted on the frame (Figures 2 and 3) and between the rear fenders (Figures 2 and 3), the engine providing motive power to at least one of the front wheels and rear wheels (Figure 3); and

an air intake box (80) connected (via vehicle structure) to the frame and supplying intake air to the engine, the air intake box including an intake pipe (82) connected to (via vehicle structure) and receiving intake air from the at least one ventilation opening (88).

Japanese Patent 61-200029 fails to explicitly state that the vehicle is an "all terrain vehicle".

However, an "all terrain vehicle" is understood to be used "off-road" as well as "on-road". Note that the English Language abstract for Japanese Patent 61-200029 recites "To make it hard for an air cleaner to suck in...up flung dust due to wheels...".

This recitation is a clear indication that the vehicle is intended to be used "off-road", as if the vehicle was used only on paved roads, there would be no "up flung dust". Also note that the rugged construction of the frame and suspension system facilitates off-road use of the vehicle.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the vehicle of Japanese Patent 61-200029 may be considered an "all terrain vehicle".

Also note regarding the recitation of "An all terrain vehicle" in the preamble of claim 1, Section 2111.02 of the MPEP recites "Any terminology in the preamble that limits the structure of the claim limitation must be treated as a claim limitation....If the body of a claim fully and intrinsically sets forth all of the limitations of the claimed invention, and the preamble merely states...the purpose or intended use of the invention...then the preamble is not considered a limitation...". Since the above preamble recitation only recites intended use and does not contain any structural limitations, any device that meets the limitations of the body of claim 1 will be understood to also meet the preamble limitations since any device that meets the limitations of the body of claim 1 will be able to functionally perform the intended use recited in the preamble.

Regarding the recitation of "rear fenders" (plural) in claim 1, note that the "all terrain vehicle" may be broadly considered to have a fender on each side of the centerline of the vehicle. Also note that Applicant shows only a single, or "continuous" rear fender on Figure 13B.

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Regarding the recitation of "each fender positioned on a side of the seat" in claim 1, note that the "outboard" portion of each fender, like Applicant's, is positioned on the left and right sides of the seat.

Regarding claim 3, note that Figure 4 of Japanese Patent 61-200029 shows the seat back 32a is "adjacent" the intake pipe 82, particularly when it is noted that Webster's Collegiate Dictionary, 10th Edition, defines "adjacent" as: "not distant".

Regarding claim 4, see Figure 4.

Regarding claim 5 and 6, see Figure 2, noting the connection of reference number 82, which is configured as a hose to reference number 86 which is configured as a short length of pipe commonly known as a "nipple" and 84. Also note that Figure 2 teaches a connecting wall (20 and 84). Although not taught by Japanese Patent 61-200029, the Examiner takes Official Notice that hoses, especially where relatively low pressures are involved, are commonly attached to pipes or nipples by clamps or clips. An example of a clamp is a "hose clamp" used on many cars. An example of a clip is a "c-clip" also used in cars, on vacuum cleaner hoses etc. A hose clamp is advantageous in that it offers 360 degree clamping of the hose, minimizing the hose coming loose. A "c-clip" is advantageous in that the clip may be installed, or removed without the "joint" being broken. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a fastener such as a hose clamp or c-clip where reference numbers 82 and 86 of Figure 4 of Japanese Patent 61-200029 are connected.

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Note that the above Official Notice is repeated from the first Office Action (paper 2). Since Applicant did not seasonally traverse the above Official Notice, the above Official Notice is now considered to be admitted prior art. See Section 2144.03 of the MPEP.

8. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent 60-153418 in view of Japanese Patent 5-147565.

Japanese Patent 60-153418 teaches a vehicle having front and rear wheels (4 and 5) comprising:

- a seat (Figure 1);

- a fender structure including a pair of rear fenders (Figure 1 - see comments below) with each fender positioned on a side of the seat (Figure 1 - see comments below);

- an engine (English Language Abstract); and

- an air intake box (13) supplying intake air to the engine, the air intake box including an intake pipe (14a, or pipe "upstream" of the air intake box in Figure 4) connected to and receiving intake air.

Japanese Patent 60-153418 fails to explicitly state that the vehicle is an "all terrain vehicle". Japanese Patent 60-153418 also fails to teach that the front and rear wheels, the rear fenders and an engine are suspended, attached and mounted, respectively to a frame, at least one ventilation opening on the rear fenders and that the engine is mounted between the rear fenders.

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However, an "all terrain vehicle" is understood to be used "off-road" as well as "on-road". Note that the vehicle of Japanese Patent 60-153418 is described in the title as a "motortricycle". Two or three wheeled motorcycles are generally understood to be capable of being ridden "off-road", in such terrain such as grass, dirt trails, etc., as well as "on-road". Due to this, the "motortricycle" of Japanese Patent 60-153418 may be considered to be an "all-terrain vehicle". All terrain vehicles are advantageous in that they offer the user the possibility of many "expanded" destinations, not accessible by a conventional automobile. Also note that the term "all terrain vehicle" is considered to be a "misnomer", as no vehicle, including Applicant's, is capable of being driven on "all terrain" of the earth, including sides of cliffs and the ocean floor.

Also, Japanese Patent 5-147565 teaches a frame (4). A frame is necessary to provide a strong and stable structure on which vehicle components such as an the engine and wheels are either directly mounted, or connected to.

Additionally, Japanese Patent 5-147565 teaches an opening (43) on a rear portion of a rear fender (37). An opening at a rear portion of a rear fender is advantageous where the radiator and fan is installed within a rear fender, such as Japanese Patent 60-153418, so as to allow a smoother and greater flow of air to the radiator (32) via reference numeral 9 of Japanese Patent 60-153418 than would be possible if there were not openings present and air had to be drawn from the open area around the bottom of the vehicle near the wheels which would require the airflow to take a sharp turn just upstream of the radiator.

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Further, Japanese Patent 60-153418, in combination with the English Language Abstract leaves unclear where the engine is located. However, due to the vehicle configuration and location of the air intake system, the only location that would allow sufficient room, and is proximal to the air intake system and drive wheels is the area under the seat and between the fenders. Note that the purpose of the engine is to provide motive power to the drive wheels. Note also that this is the location of the engine taught by Japanese Patent 5-147565. Also note that the English Language Abstract of Japanese Patent 60-153418 teaches that the air intake pipe 14a is associated with a carburetor. The Examiner takes Official Notice that a carburetor is associated with an engine. This may be seen on various small vehicles such as lawn mowers and pre "mid-80's vintage" automobiles. A carburetor is necessary to provide the correct air/fuel ratio to an engine and to regulate engine output by controlling the density of the incoming air/fuel mixture to the engine. Note that the above Official Notice is repeated from the first Office Action (paper 2). Since Applicant did not seasonally traverse the above Official Notice, the above Official Notice is now considered to be admitted prior art. See Section 2144.03 of the MPEP.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the vehicle of Japanese Patent 60-15348 may be considered an "all terrain vehicle". It also would have been obvious to one of ordinary skill in the art at the time the invention was made that the vehicle of Japanese Patent 60-15348 would have a frame, as taught by Japanese Patent 5-147565. It additionally would have been obvious to one of ordinary skill in the art at the time the invention was

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made to include ventilation openings on the rear fenders of Japanese Patent 60-15348, as taught by Japanese Patent 5-147565. It further would have been obvious to one of ordinary skill in the art at the time the invention was made that the engine of Japanese Patent 60-15348 would be located between the rear fenders.

Note that when the teachings of Japanese Patent 5-147565, which arguably has only a single rear fender, since it has only a single rear wheel, is applied to Japanese Patent 60-153418, which has two rear fenders, since it has two rear wheels, that the opening 43 of Japanese Patent 5-147565 would be on both rear fenders of Japanese Patent 60-153418.

Regarding the recitation of "each fender positioned on a side of the seat" in claim 1, note that the "outboard" portion of each fender of the combination all terrain vehicle of Japanese Patent 60-153418 and Japanese Patent 5-147565, like Applicant's, is positioned on the left and right sides of the seat.

Also note regarding the recitation of "An all terrain vehicle" in the preamble of claim 1, Section 2111.02 of the MPEP recites "Any terminology in the preamble that limits the structure of the claim limitation must be treated as a claim limitation....If the body of a claim fully and intrinsically sets forth all of the limitations of the claimed invention, and the preamble merely states...the purpose or intended use of the invention...then the preamble is not considered a limitation...". Since the above preamble recitation only recites intended use and does not contain any structural limitations, any device that meets the limitations of the body of claim 1 will be understood to also meet the preamble limitations since any device that meets the

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limitations of the body of claim 1 will be able to functionally perform the intended use recited in the preamble.

Regarding the recitation of "rear fenders" (plural) in claim 1, note that the all terrain vehicle may be considered to have a fender on each side of the centerline of the vehicle. Also note that Applicant shows only a single rear fender on Figure 13. Further note that the title of Japanese Patent 60-15348 is motor tricycle (see English Language Abstract). From this, it is best understood that there are two rear wheels, each rear wheel having an associated fender.

Regarding the recitation of "radiator" in claim 2, see reference number 7 of Japanese Patent 60-153418. Regarding the recitation of "the radiator drawing intake air from the at least one ventilation opening" in claim 2, note that the radiator 7 of the combination all terrain vehicle of Japanese Patent 60-15348 "draws" air from reference number 9. Note that the location of reference number 9 (4 places - see Figure 3) of Japanese Patent 60-15348 is proximal the opening 43 of Japanese Patent 5-147565.

Regarding claims 3 and 4, see Figure 1 of Japanese Patent 60-153418, noting reference number 43 will be located above a water wave, particularly when the wave is small.

9. Claims 18 and 20, 21, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent 60-153418 in view of Japanese Patent 5-147565.

Japanese Patent 60-153418 teaches a straddle-type vehicle having front and rear wheels (Figure 1) and being capable of traversing water having a predetermined depth (say 1"), the vehicle comprising:

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an engine (English Language abstract);

an air intake box (13); and

a pair of rear fenders (2 - note that the title of the Japanese Patent 60-153418 in the English Language Abstract is "motortricycle" which implies two rear wheels). See also the claim objection portion of this Office Action regarding the recitation of "pair of fenders".

Japanese Patent 60-153418 fails to teach at least one opening in communication with the air box, the at least one opening being provided on the rear fenders and positioned on the vehicle rearward of the front wheels and above the front wheels so that a height of the opening is greater than the predetermined depth of the water, the at least one opening being positioned on the vehicle so as to avoid water entering the at least one opening due to encountering a water wave created in front of the vehicle that has a wave depth greater than the predetermined depth of the water. Japanese Patent 60-153418 also fails to explicitly state that there is a frame.

However, Japanese Patent 5-147565 teaches at least one opening (43) on a rear fender (37) and above the front wheel (see Figures 1 and 4, noting that the opening 43 is above the rear wheel and that the rear and front wheels are the same height) . An opening at a rear portion of a rear fender is advantageous where the radiator and fan is installed within a rear fender, such as Japanese Patent 60-153418, so as to allow a smoother and greater flow of air to the radiator than would be possible if there were not openings present and air had to be drawn from the open area around the bottom of the

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vehicle near the wheels which would require the airflow to take a sharp turn just upstream of the radiator.

Also, Japanese Patent 5-147565 teaches a frame (4). A frame is necessary to provide a strong and stable structure on which vehicle components are either directly mounted, or connected to.

Additionally, note that the at least one opening of Japanese Patent 5-147565 when applied to the air intake system of Japanese Patent 60-153418 is positioned on the vehicle rearward of the front wheels (Figure 1 of Japanese Patent 60-153418 and Figure 4 of Japanese Patent 5-147565) so that a height of the opening is greater than the predetermined depth (say $\frac{1}{2}$ ") of water, the at least one opening being positioned (at a relatively high height and rearward location on the vehicle) on the vehicle so as to avoid water entering the at least one opening due to encountering a water wave created in front of the vehicle that has a wave depth greater than the predetermined depth of the water. An opening positioned at a height higher than a water wave is advantageous in that water will not be drawn into the engine intake, or through the radiator fan, which could damage the radiator fan, or reduce fan RPM, by creating drag.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize at least one opening a rear fender above a front wheel in order to supply intake air to the air intake system of Japanese Patent 60-153418, as taught by Japanese Patent 5-147565. It also would have been obvious to one of ordinary skill in the art at the time the invention was made that the vehicle of Japanese Patent 60-153418 would have a frame, as taught by Japanese Patent 5-

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147565. It additionally would have been obvious to one of ordinary skill in the art at the time the invention was made that the opening on the vehicle of Japanese Patent 60-15348 would be positioned on the rear fenders at a height so as to avoid a water wave, as partially taught (openings on rear fenders) by Japanese Patent 5-147565.

Note that when the teachings of Japanese Patent 5-147565, which arguably has only a single rear fender, since it has only a single rear wheel, is applied to Japanese Patent 60-153418, which has two rear fenders, since it has two rear wheels, that the openings 42 and 43 of Japanese Patent 5-147565 are on both rear fenders of Japanese Patent 60-153418.

Regarding claim 20, see Figure 4 of Japanese Patent 5-147565.

Regarding claim 21, see Figure 4 of Japanese Patent 60-153418, particularly reference number 13 and the portion of the pipe "upstream" of reference number 13. See also Figure 4 of Japanese Patent 5-147565.

Regarding claim 22, it would have been obvious to one of ordinary skill in the art to orient the intake pipe shown on Figure 4 of Japanese Patent 60-153418 toward the fender of Japanese Patent 5-147565 containing the opening (43) in order to improve air flow.

Regarding claim 23, see the drawing figures of Japanese Patent 60-153418.

Regarding claim 24, see reference number 43 and Figure 1 of Japanese Patent 5-147565.

10. Claims 25 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent 61-200029.

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Japanese Patent 61-200029 teaches a vehicle having front and rear wheels suspended from the frame (Figures 1-4) comprising:

a frame on which the front and rear wheels are suspended (Figures 2-4);

an engine (58) mounted on the frame (Figure 3);

a fender structure (10) overlying at least the rear wheels, the fender structure including at least one aperture (88) overlying and higher than the rear wheels (see Figure 4 and the comments below); and

An air intake system in communication with the engine, the air intake system including an air intake box (80) mounted (via vehicle structure) on the frame, the air intake box having an intake pipe (82) having an inlet end, the intake pipe being fastened with respect to the fender structure such that the inlet end is in communication with the aperture in the fender structure and is positioned rearward of the front wheels and higher than the rear wheels (Figures 1-4).

Japanese Patent 61-200029 fails to explicitly state that the vehicle is an "all terrain vehicle".

However, an "all terrain vehicle" is understood to be used "off-road" as well as "on-road". Note that the English Language abstract for Japanese Patent 61-200029 recites "To make it hard for an air cleaner to suck in...up flung dust due to wheels...". This recitation is a clear indication that the vehicle is intended to be used "off-road", as if the vehicle was used only on "paved roads", there would be no "up flung dust". Also note that the "rugged" construction of the frame and suspension system facilitates off-road use of the vehicle. Also note that the term "all terrain vehicle" is considered to be a

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"misnomer", as no vehicle, including Applicant's, is capable of being driven on "all terrain" of the earth, including sides of cliffs and the ocean floor.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the vehicle of Japanese Patent 61-200029 may be considered an "all terrain vehicle".

Regarding the claim 25 recitation "at least one aperture overlying and higher than the rear wheels", note the following:

1) Webster's Collegiate Dictionary does not define the word "overlying".

However, the word "overlying" is best understood to mean "lies over". Note that Webster's Collegiate Dictionary defines "over" as: "above...".

2) Note that the aperture (88) of Japanese Patent 61-200029 lies above (at a higher elevation) than the rear wheels.

Regarding claim 27, see Figure 2, noting the connection of reference number 82, which is configured as a hose to reference number 86 which is configured as a short length of pipe commonly known as a "nipple" and 84. Although not taught by Japanese Patent 61-200029, the Examiner takes Official Notice that hoses, especially where relatively low pressures are involved are commonly attached to pipes or nipples by clamps or clips. An example of a clamp is a "hose clamp" used on many cars. An example of a clip is a "c-clip" also used in cars, on vacuum cleaner hoses etc. A hose clamp is advantageous in that it offers 360 degree clamping of the hose, minimizing the hose coming loose. A "c-clip" is advantageous in that the clip may be installed, or removed without the "joint" being broken.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a fastener, such as a c-clip where reference numbers 82 and 86 of Figure 4 of Japanese Patent 61-200029 are connected.

Note that the above Official Notice is repeated from the first Office Action (paper 2). Since Applicant did not seasonally traverse the above Official Notice, the above Official Notice is now considered to be admitted prior art. See Section 2144.03 of the MPEP.

11. Claims 25, 26, 28, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent 60-153418 in view of Japanese Patent 5-147565 and Peter, US Patent 5,947,219.

Japanese Patent 60-153418 teaches a vehicle having front and rear wheels (4 and 5)

comprising:

a fender structure overlying the rear wheels (Figure 1);

an engine (English Language Abstract); and

An air intake system (including 13 and 14a) in communication with the engine (English Language abstract), the air intake system including an air intake box (13), the air intake box having an intake pipe ("curved pipe" in Figure 4 just "upstream" of radiator portion 7a) having an inlet end, the intake pipe being fastened with respect to the fender structure such that the inlet end is in communication with the aperture in the fender structure and is positioned rearward of the front wheels (Figure 1).

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Japanese Patent 60-153418 fails to explicitly state that the vehicle is an "all terrain vehicle". Japanese Patent 60-153418 also fails to teach that the front and rear wheels and an engine and air intake box are suspended, and mounted, respectively to a frame, at least one aperture on the fender structure associated with the air intake of an engine and that the inlet end of the intake pipe is higher than the rear wheels and overlies the rear wheels.

However, an "all terrain vehicle" is understood to be used "off-road" as well as "on-road". Note that the vehicle of Japanese Patent 60-153418 is described in the title as a "motortricycle". Two or three wheeled motorcycles are generally understood to be capable of being ridden "off-road", in such terrain such as grass, dirt trails, etc., as well as "on-road". Due to this, the "motortricycle" of Japanese Patent 60-153418 may be considered to be an "all-terrain vehicle". All terrain vehicles are advantageous in that they offer the user the possibility of many "expanded" destinations, not accessible by a conventional automobile. Also note that the term "all terrain vehicle" is considered to be a "misnomer", as no vehicle, including Applicant's, is capable of being driven on "all terrain" of the earth, including sides of cliffs and the ocean floor.

Also, Japanese Patent 5-147565 teaches a frame (4). A frame is necessary to provide a strong and stable structure on which vehicle components are either directly mounted, or connected to. Note that Figure 1 of Japanese Patent 5-147565 shows the engine mounted on the frame (4), via connecting components. Note that the "frame" may also be considered to include reference numbers 19 and 23 of Japanese Patent 5-147565.

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Additionally, Japanese Patent 5-147565 teaches an aperture (43) on a rear fender (37) that is located higher than the rear wheels (see Figure 1) and also overlying the rear wheels (Figure 1). A location of the aperture higher than the rear wheels is advantageous in that dust and debris that may be thrown-up by the rear tires are less likely to enter the aperture at a higher location due to the effect of gravity.

Further, note that Peter teaches an aperture (see above sketch) on the rear side of a rear fender (32). An aperture is advantageous on a rear fender in that it allows improved air flow to internal located components. Note that the aperture of Peter is proximal the air intake (piping "upstream" of 13) going to the carburetor (see English Language Abstract) of Japanese Patent 60-153418. Note also that the air intakes of Peter are above the rear wheels of Peter. This will improve airflow to the carburetor of Japanese Patent 60-153418.

Also, Japanese Patent 60-153418 does not explicitly mention an engine. However, the Examiner takes Official Notice that a carburetor is associated with an engine. The purpose of a carburetor is to provide correct the correct air/fuel ratio to an engine and to regulate the density of the air/fuel mixture to the engine by use of a throttle valve to regulate power output of the engine. This may be seen on many small tractors and mowers, as well as pre "mid-80's vintage" automobiles. Note that the above Official Notice is repeated from the first Office Action (paper 2). Since Applicant did not seasonally traverse the above Official Notice, the above Official Notice is now considered to be admitted prior art. See Section 2144.03 of the MPEP.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the vehicle of Japanese Patent 60-15348 may be considered an "all terrain vehicle". It also would have been obvious to one of ordinary skill in the art at the time the invention was made that the vehicle of Japanese Patent 60-15348 would have a frame, as taught by Japanese Patent 5-147565. It additionally would have been obvious to one of ordinary skill in the art at the time the invention was made to include an aperture on the fender structure of Japanese Patent 60-15348 that also overlies the rear wheel, as taught by Japanese Patent 5-147565. It further would have been obvious to one of ordinary skill in the art at the time the invention was made to include apertures at the rear of the fender of Japanese Patent 60-15348, as taught by Peter.

Regarding the apertures of Peter, note that Japanese Patent 5-147565 already teaches apertures at the front and sides of a rear fender. Further note that per Section 2144 of the MPEP that it is considered within the skill level of one of ordinary skill in the art to duplicate parts.

Also note regarding the recitation of "An all terrain vehicle" in the preamble of claim 25, Section 2111.02 of the MPEP recites "Any terminology in the preamble that limits the structure of the claim limitation must be treated as a claim limitation....If the body of a claim fully and intrinsically sets forth all of the limitations of the claimed invention, and the preamble merely states...the purpose or intended use of the invention...then the preamble is not considered a limitation...". Since the above preamble recitation only recites intended use and does not contain any structural

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limitations, any device that meets the limitations of the body of claim 25 will be understood to also meet the preamble limitations since any device that meets the limitations of the body of claim 1 will be able to functionally perform the intended use recited in the preamble.

Regarding claim 26, see Figure 4 of Japanese Patent 60-153418 and particularly the piping "upstream" of reference number 13 and also reference number 7. See also Figure 4 of Japanese Patent 5-147565.

Regarding claim 28, see Figure 4 of Japanese Patent 60-153418.

Regarding claim 30, see Figure 1 of Japanese Patent 60-153418 and comments above concerning the location of the "combination" intake pipe of Japanese Patent 60-153418 and Peter.

Regarding claim 31, see Figure 4 of Japanese Patent 5-147565.

12. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent 60-153418, Japanese Patent 5-147565 and Peter, US Patent 5,947,219, as applied to claim 25 and further in view of Powell, US Patent 6,243,928.

The combination all-terrain vehicle of Japanese Patent 60-153418 fails to teach how air intake pipe 14a is attached to surrounding structure.

However, Powell teaches the use of a clip to attach a pipe (see title) to surrounding structure (32). The use of a clip to attach a pipe to surrounding structure, is advantageous in the clip holds the pipe securely in place and prevents excessive vibration or unwanted movement.

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Therefore, it would have been obvious to one of ordinary skill in the art to utilize a clip to mount the intake pipe of the combination all-terrain vehicle of Japanese Patent 60-153418 in place, as taught by Powell.

Regarding the claim 27 recitation of "a clip that attaches to the fender structure" see the claim objection portion of this Office Action, noting that reference number 8 of Japanese Patent 60-153418 may broadly be termed "fender structure" to the extent that reference number 502 of the Instant Application is being termed "fender structure". Also note that the surrounding structure, 8, of Japanese Patent 60-153418 is "attached to" the fender structure via vehicle structure.

13. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent 60-153418, Japanese Patent 5-147565 and Peter, et al, US Patent 5,947,219, as applied to claim 25 and further in view of Japanese Patent 1301484.

The combination all-terrain vehicle of Japanese Patent 60-153418 teaches an aperture (9) on the forward end of the fender structure and an intake pipe (10) with a "bent" portion (Figure 2) such that the inlet end faces a front end of the vehicle. Japanese Patent 60-153418 in combination with the English Language abstract leaves unclear that this structure is associated with the air intake of an engine. Pipe 10 is understood to be only associated with the radiator cooling air.

However, Japanese Patent 1301484 teaches an intake system that draws air both from the rear and forward direction of the vehicle. This is advantageous in that when the vehicle is idling, the "dual" intake locations provide sufficient airflow. When

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the vehicle is traveling at high speeds, the forward intake location provides greater power and efficiency by "supercharging" the intake air.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the front aperture and intake pipe facing forward of Japanese Patent 60-153418 for intake air to the engine, as taught by Japanese Patent 1301484.

Note that in order to accomplish this, that some minor "plumbing" modifications may be required so that the intake pipe is directly receiving "supercharged" air from the aperture and that this supercharged air is directed to the airbox. These "plumbing" modifications are considered within the skill level of one of ordinary skill in the art. Note that per Section 2144 of the MPEP it is considered within the skill level of one of ordinary skill in the art to rearrange parts.

Allowable Subject Matter

14. Claims 7, 9-12, 14, 16 and 17 are allowed.

15. Claim 13 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

16. Claim 22 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Response to Applicant's Remarks (paper 8) and Examiner's Comments

17. The amendment (paper 8), including Applicant's comments, resolved all specification and claim objections made on the last Office Action (paper 5).

18. The Formal Drawings (paper 6) have overcome the drawing objections made on the last Office Action.

19. The amendment has overcome the 35 USC 112 2nd paragraph rejection made on the last Office Action.

20. The amendment has overcome the 102 and 103 rejections made on the last Office Action of independent claim 7 and claims depending upon claim 7.

21. Upon further review and in light of Applicant's comments, any rejections set forth in the last Office Action utilizing JP '610 as a primary reference has been withdrawn, as the Examiner agrees with the Applicant's contention that reference number 34 is not an air intake. In contrast, upon further review, reference number 34 would appear to be related to an engine exhaust.

22. Applicant's arguments against the 103 rejections made in the last Office Action are considered moot, due to the amendments to the independent claims. However, since the same prior art is again utilized in this Office Action (paper 9), as the last Office Action (paper 5), pertinent comments regarding rejections made in the last Office Action (paper 5) will be addressed as follows:

(1) Applicant's remark - On page 12 of paper 8, regarding the 103 rejection of claims 1 and 3-6 as being unpatentable over Japanese Patent 61-200029, the Applicant recites "...JP '029 does not disclose...a combination of elements that includes...the rear

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fenders on each side of a seat having at least one ventilation opening...JP '029 discloses fenders 76a and 76b that are behind the seat and clearly separate from the partition panel 84...".

Examiner's response - The Examiner offers the following comment:

As noted in this and the last Office Action, the rear fenders of JP '029 are defined to include reference number 10. Terming the structure that corresponds to reference number 10 a "rear fender" is consistent with structure identified as a rear fender by Applicant in the Instant Application. The fact that reference numbers 76a and 76b are present and may be termed "fenders", does not preclude terming reference number 10 as JP '029 as rear fenders.

(2) Applicant's remark - On page 13, regarding the rejection of claims 1-4 as being unpatentable over Japanese Patent 60-153418 in view of Japanese Patent 5-146565, the Applicant recites "...The air intake pipe 14a of JP '418 could not be connected to the at least one ventilation opening of JP '565 because the air intake pipe 14a of JP '418 is disposed between an air cleaner 13 and the carburetor".

Examiner's response - The Examiner offers the following comment:

Note that the ventilation opening of JP '565 is connected to the air intake pipe 14a of JP '418 via vehicle structure. There is not limitation that the ventilation opening and air intake pipe be directly attached to each other, as implied by Applicant in the above recitation. Also regarding claim 1, note that the air intake pipe "receives" intake air from the ventilation opening, as well as other sources.

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(3) Applicant's remark - On page 14, regarding the rejection of claims 18, 20, 21, 23 and 24 as being unpatentable over Japanese Patent 60-153418 in view of Japanese Patent 5-147565, the Applicant recites "JP '565 does not disclose or suggest at least one opening in communication with the air box or the at least one opening being provided on the rear fenders...JP'565 does not even disclose or suggest an air box...There is no indication as to what element 43 represents in the figures..."

Examiner's response - The Examiner offers the following comment:

JP '565 teaches an opening (43) in a rear fender. Although reference number 43 is not described in the English Language abstract, reference number 43 clearly is illustrated as a opening in a rear fender to which air may flow through. If it is Applicant's contention that reference number 43 is not an opening, it is requested that Applicant provide an explanation as to what function the Applicant contends reference number 43 provides. Note also that the disclosure of a patent is not limited to strictly written material but also includes the drawing figures. Regarding the contention that JP '565 does not teach an air box, note that this teaching is provided by JP '418.

Note that the opening of JP '565 is in "communication" with the air box of JP 418, due to the following:

Webster's Collegiate Dictionary defines "communication" as "an act or instance of transmitting". Note that outside air may be "transmitted" to the air box of JP '418 via the opening in the rear fender of JP '565, as well as other sources.

(4) Applicant's remark - On page 16, regarding the rejection of claims 25 and 27 as being unpatentable over Japanese Patent 61-200029, the Applicant recites "...JP

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'029 does not disclose...a fender structure including at least one aperture...JP '029 discloses fenders 76a and 76b...".

Examiner's response - The Examiner offers the following comment:

As already noted in this Office Action, although reference number 76a and 76b may be described as "fenders", this does not preclude reference number 10 as also being described as a "rear fender". Note that the structure illustrated as reference number 10 on JP '029 is equivalent to structure described by Applicant as a "rear fender" in the Instant Application.

(5) Applicant's remark - On page 16, regarding the rejection of claims 25, 26, 28, 30 and 31 as being unpatentable over Japanese Patent 60-153418 in view of Japanese Patent 5-137565 and Peter, US Patent 5,947,219, the Applicant recites: "...JP '565 does not disclose or suggest a fender structure including at least one aperture, and an air intake system that includes an air intake box and an air intake pipe, the intake pipe being fastened with respect to the fender structure such that the inlet end is in communication with the aperture in the fender structure and is positioned higher than the rear wheels... Peter et al does not make up for the deficiencies of JP '418 and '565... Nowhere does Peter et al disclose or suggest what the unlabeled features on opposite sides of 32 represent...".

Examiner's response - The Examiner offers the following comments:

a) As already noted in this Office Action, JP'565 teaches an aperture (43) that is positioned higher than a rear wheel and is in communication with an air box and intake pipe of JP '418.

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b) Regarding the Peter reference, it is the opinion of the Examiner that the "features" referred to by Applicant above are clearly openings in the fender which allow air to flow through. If it is Applicant's contention that these "features" are not openings, it is requested that Applicant set forth his opinion as to the function of these "features". Note also that the disclosure of a patent is not limited to strictly written material but also includes the drawing figures.

(6) Applicant's remark - On page 17, regarding the rejection of claim 27 as being unpatentable over Japanese Patent 60-153418, Japanese Patent 5-147565 and Peter, US Patent 5,947,219 and further in view of Powell, US Patent 6,243,928, the Applicant recites "...Powell does not make up for the deficiencies of JP '418, JP '565 and Peter et al... Powell is specifically directed to a cable and pipe clip...".

Examiner's response - The Examiner offers the following comment:

Powell was utilized to provide a teaching of how a pipe would be secured to surrounding structure. It is the opinion of the Examiner that one of ordinary skill in the art, faced with the teaching of the above Japanese Patents and US 6,243,928 in combination with Powell would realize that an intake pipe could be secured to a surrounding structure with the pipe clip of Powell.

(7) Applicant's remark - On page 18, regarding the rejection of claim 29 as being unpatentable over Japanese Patent 60-153418, Japanese Patent 5-147565 and Peter, et al, US Patent 5,947,219, as applied to claim 25 and further in view of Japanese Patent 1301484, the Applicant recites: "...JP '484 discloses an air introduction port 11... There is no indication that opening is an inlet".

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Examiner's response - The Examiner offers the following comment:

From reading of the English Language abstract, particularly the description of reference number 12 as an "opening", it is apparent that reference number 12 is an inlet.

23. On page 18 of paper 8, the Applicant notes that new independent claim 32 has incorporated the limitations of dependent claim 15, which was indicated as containing allowable subject matter in the last Office Action. However, note that dependant claim 15 is dependant upon claim 7. Note that claim 32 does not incorporate all the limitations of independent claim 7, such that new claim 32 is broader than the indication of allowable subject matter in the last Office Action (paper 5). Accordingly, claim 32 has been rejected under 35 USC 103, as set forth in this Office Action.

Conclusion

24. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

25. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

A) Hamase, et al - teaches an air opening for a motorcycle

B) Gagnon, et al – teaches similar ATV

C) Japanese Patent 59-48270 - teaches an air opening for a scooter

D) Japanese Patent 61-146633 - teaches an air opening for a straddle-type vehicle

E) Japanese Patent 62-105719 - teaches an air opening for a straddle-type vehicle

26. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Bryan Fischmann whose telephone number is (703) 306-5955. The examiner can normally be reached on Monday through Friday from 8:30 to 5:00.

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson, can be reached on (703) 308-0885. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

 12-8-3
BRYAN FISCHMANN
PATENT EXAMINER